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TC 3600

In re Application of:	:	DECISION ON PETITION
Stefan HUEDEPOHL	:	UNDER 37 CFR 1.181 and/or
Application No. 10/658,038	:	37 CFR 1.144 and/or
Filed: September 9, 2003	:	MPEP 1306.01

This is in response to the petition filed December 20, 2004 to invoke Supervisory Authority under 37 CFR 1.181 and/or under 37 CFR 1.144 to withdraw Restriction Requirement and/or under MPEP 1306.01 to defer issuance of the present application until all matters discussed herein are resolved.

Applicant petitions under 37 CFR 1.181 to invoke Supervisory Authority in order to correct several irregularities in the present application before issuance. Specifically, requests consideration of an initialed copy of an Information Disclosure Statement (Form PTO-1449) filed August 31, 2004, an interview summary concerning substantive discussions between the undersigned and the Examiner during October 2004 and clarification of the basis for canceling claims 21-25.

Applicant further petitions under 37 CFR 1.144 to request reconsideration and withdrawal of the Restriction Requirement mailed August 2, 2004.

Finally, Applicant petitions to defer issuance until all matters discussed therein above are satisfactorily resolved.

With regards to the consideration of the Information Disclosure Statement filed August 31, 2004, the record reveals that since the filing of the Petitions, the Examiner considered and initialed the Form PTO-1449 in a Supplemental Notice of Allowability mailed January 18, 2005. Therefore, this issue is moot.

With regard to the remaining issues, a review of the record reveals that a restriction requirement was mailed August 2, 2004 that required Applicant to select one of the inventions represented by claims 1-20 and claims 21-25. On August 31, 2004, Applicant filed a Response to the restriction requirement, in which claims 1-20 were provisionally elected with traverse. A Notice of Allowance and Examiner's Amendment was mailed on October 18, 2004. The Examiner's Amendment identified an authorization by Applicant's representative to make minor changes to the claims as well as an authorization to cancel non-elected claims 21-25 in order to put the case in condition for allowance. A separate Interview Summary was not found in the record.

13. A further review of the record reveals that the Restriction Requirement identified two inventions – Group I (claims 1-20) drawn to a foldable top classified in Class 296, Subclass 107.07 and Group II (claims 21-25) drawn to an apparatus and method classified in Class 296, Subclass 107.12. Claims 1-20 are directed towards a foldable top suitable for a convertible vehicle comprising a rear window, a tensioning bow and at least one connector disposed on the supporting portion between the rear window and the tensioning bow, the connector constructed to releasably engage the lower edge of the rear window with the tensioning bow. Claims 21-23 are directed towards an apparatus comprising a first means for moving a foldable top between a roof closed and open position and a second means for automatically unlocking a lower edge of a rear window supported within the foldable top from a tensioning bow disposed within the foldable top.

Applicant argues the primary basis for requiring restriction was the alleged separate classification of the inventions. Applicant points out that the Examiner's search notes dated October 18, 2004 reveal the Examiner searched both subclasses 107.07 and 107.12 of Class 296. Applicant argues that since Examiner searched both subclasses identified in Group I and Group II, the primary reason for restriction has been made moot. Applicant concludes that the Examiner has not sufficiently shown why it would be a serious burden to examine all claims as per MPEP 803.

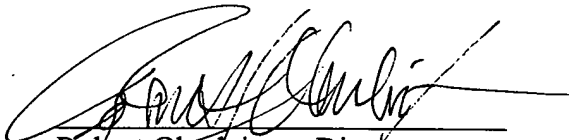
A review of the Office action indicates that the examiner has not sufficiently shown the distinctness between the specifics of the subcombination and the related limitations of the combination claims. The inventions or groups identified all recite a different combination of elements associated with foldable tops or convertible roof systems having tensioning bows and rear windows.

In view of the insufficient showing of distinctness the restriction requirement as it applies to Groups I-II (claims 1-25) is hereby vacated.

The petition is GRANTED to the extent that the restriction requirement is vacated and claims 21-25 will be reinstated.

The application will be withdrawn from issue in order to permit the examiner to prepare a non-final action on the merits for claims 1-25 consistent with this decision.

Telephone inquiries should be directed to D. Glenn Dayoan, Supervisory Patent Examiner, at (703) 308-3102.


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